

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** December 30, 2016

**Thru:** Bridget C. Bohac, Chief Clerk  
Richard A. Hyde, P.E., Executive Director

**From:** Ramiro Garcia, Jr., Deputy Director  
Office of Compliance and Enforcement

**Docket No.:** 2016-0485-RUL

**Subject:** Commission Approval for Proposed Rulemaking  
Chapter 111, Control of Air Pollution from Visible Emissions and  
Particulate Matter  
Amend Prescribed Burning Rules  
Rule Project No. 2016-027-111-CE

**Background and reason(s) for the rulemaking:**

On April 6, 2016, the Texas Commission on Environmental Quality (commission or TCEQ) approved the initiation of rulemaking based on a petition received by the Texas Forestry Association. The petitioner requested the commission to amend 30 Texas Administrative Code (TAC) Chapter 111, Subchapter B, concerning Outdoor Burning, to provide specific requirements for prescribed burning conducted by Certified and Insured Prescribed Burn Managers (CPBMs) who are certified by the Prescribed Burning Board (PBB) of the Texas Department of Agriculture.

**Scope of the rulemaking:**

The proposed rulemaking will amend the definitions in § 111.203 and add new § 111.217.

**A.) Summary of what the rulemaking will do:**

The proposed rulemaking will add clarification and more specific language to the current rules related to prescribed burning conducted by Certified and Insured Prescribed Burn Managers (CPBMs) who are certified by the Prescribed Burning Board. Amendments to the definitions in § 111.203 will address the petitioner's request and add a new definition to TCEQ rules for Certified and Insured Prescribed Burn Managers. New § 111.217 will align commission rules with the Texas Department of Agriculture rules for CPBMs, as well as clarify commission rules for CPBMs.

**B.) Scope required by federal regulations or state statutes:**

TCEQ is required to revise the state implementation plan.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

There are no additional staff recommendations for the proposed rulemaking.

**Statutory authority:**

Texas Health and Safety Code, §§ 382.002, 382.011, 382.012, 382.017, and 382.051; Texas Water Code, §§ 5.102, 5.103, and 5.105; and Federal Clean Air Act, 42 United States Code, § 7401 *et seq.*

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**Effect on the:**

**A.) Regulated community:** This rulemaking would have a minimal effect on the regulated community. It will ensure that Certified and Insured Prescribed Burn Managers have clear applicable requirements.

**B.) Public:** This rulemaking would have a minimal effect on the public. It will ensure that Certified and Insured Prescribed Burn Managers are in compliance with all applicable requirements.

**C.) Agency programs:** This rulemaking would have a minimal effect on agency programs.

**Stakeholder meetings:**

A stakeholder meeting was held on June 16, 2016, at the TCEQ in Austin. Prescribed burn managers, industry, state agencies, and the public were in attendance. In general, stakeholders supported most of the recommended changes in the petition, however the TCEQ received many comments suggesting that additional changes be made to the Outdoor Burning rules. No additional changes were made in response to stakeholder comments as they were outside the scope of the petition.

**Potential controversial concerns and legislative interest:**

After an evaluation of safety and air quality concerns, not all of the recommended changes in the petition were included in this proposed rulemaking. There is no known legislative interest.

**Will this rulemaking affect any current policies or require development of new policies?**

The proposed rulemaking will not affect any current policies or require development of new policies.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

If the proposed rulemaking does not go forward, the Outdoor Burning rules for Certified and Insured Prescribed Burn Managers will not be clearly defined, which could lead to confusion with Texas Department of Agriculture requirements.

**Key points in the proposal rulemaking schedule:**

**Anticipated proposal date:** January 18, 2017

**Anticipated *Texas Register* publication date:** February 3, 2017

**Anticipated public hearing date (if any):** February 28, 2017

**Anticipated public comment period:** February 3, 2017 – March 6, 2017

**Anticipated adoption date:** June 2017

**Agency contacts:**

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Kris Hogan, Texas Register Rule/Agenda Coordinator, (512) 239-6812

**Attachments:**

Petition

Petition Order

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Marshall Coover  
Erin Chancellor  
Stephen Tatum  
Jim Rizk  
Office of General Counsel  
Beryl Thatcher  
Kris Hogan